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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 PATRICK CROSS, individually and on
11 behalf of all others similarly situated,
12
13 Plaintiff,
14 v.
15 INFINITY ENERGY, INC.; and INFY
16 MARKETING, LLC,
17
18 Defendants.

Case No.: 16cv2527-MMA (JLB)

**ORDER GRANTING DEFENDANTS'
UNOPPOSED MOTION FOR LEAVE
TO FILE THIRD PARTY
COMPLAINT AGAINST VIRTUAL
SALES SOLUTIONS**

[Doc. No. 21]

19 Plaintiff Patrick Cross (“Plaintiff”) filed a First Amended Class Action Complaint
20 (“FAC”) against Defendants Infinity Energy, Inc. (“Infinity”) and INFY Marketing, LLC
21 (“INFY,” collectively “Defendants”) on October 10, 2016, alleging violations of the
22 Telephone Consumer Protection Act, 47 U.S.C. § 277, *et seq.* (“TCPA”). *See* Doc. No.
23 1. On February 1, 2017, Infinity filed an answer to Plaintiff’s FAC. *See* Doc. No. 6. On
24 February 7, 2017, INFY filed an answer to Plaintiff’s FAC. *See* Doc. No. 8. Defendants
25 now move for leave to file a Third-Party Complaint against Virtual Sales Solutions. *See*
26 Doc. No. 21. On April 24, 2017, Plaintiff Patrick Cross filed a statement of non-
27 opposition regarding Defendants’ motion. *See* Doc. No. 22. For the reasons set forth
28 below, the Court **GRANTS** Defendants’ motion.

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Here, the Court finds the interests of justice are served by permitting Defendants to file a Third-Party Complaint against Virtual Sales Solutions (“VSS”). INFY entered into a contract with VSS in order for VSS to provide marketing solicitation services to INFY. *See* Doc. No. 21-1 at 2. Pursuant to the parties’ contract, “VSS expressly agreed to indemnify INFY and Infinity. . . for all claims and damages arising out of VSS[’s] performance of its marketing duties contemplated by the Agreement.” *Id.* Defendants contend that pursuant to the indemnity provisions of the contract, VSS is responsible for any alleged violation of the TCPA, and any damages flowing therefrom. *See id.* Thus, permitting Defendants to file a Third-Party Complaint eliminates the need for Defendants to bring a separate action against VSS. *See Southwest*, 791 F.2d at 777. Additionally, Plaintiff does not oppose the filing of a Third-Party Complaint in this action. *See* Doc. No. 22. Finally, although Defendants technically filed the instant motion after the March 29, 2017 deadline to join parties, amend pleadings, or to file additional pleadings as set forth in the Scheduling Order (Doc. No. 17), Defendants’ motion is well in advance of the April 3, 2018 trial date. As such, the Court **GRANTS** Defendants’ motion.

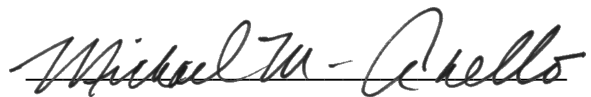
-2- 16cv2527-MMA (JLB)

1 **CONCLUSION**

2 For the reasons set forth above, the Court **VACATES** the previously scheduled
3 hearing date and **GRANTS** Defendants' motion for leave to file a Third-Party Complaint
4 against Virtual Sales Solutions. Defendants must separately file the Third-Party
5 Complaint, previously filed as "INFY Marketing, LLC's Third-Party Complaint Against
6 Virtual Sales Solutions" (Doc. No. 21-2 at 50), on the docket within three (3) days of this
7 Order.

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9 **IT IS SO ORDERED.**

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11 Dated: April 25, 2017

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13 HON. MICHAEL M. ANELLO
14 United States District Judge
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